IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4666 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA sd/-
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1.   Whether Reporters of Local Papers may be allowed
        to see the judgements?   No

2.   To be referred to the Reporter or not? No   @@
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3.   Whether Their Lordships wish to see the fair copy
        of the judgement?   No

4.   Whether this case involves a substantial question
        of law as to the interpretation of the Constitution
        of India, 1950 of any Order made thereunder? No

5.   Whether it is to be circulated to the Civil
Judge? No

SHAIKH IRFAN SHAIKH AHEMAD   SHAIKH
Versus
COMMISSIONER OF POLICE

Appearance:
     MS DR KACHHAVAH for Petitioner
     Ms.Siddhi Talati,A.G.P. for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE D.C.SRIVASTAVA
Date of decision: 24/12/98

ORAL JUDGEMENT
1. In this writ petition under Article 226 of the

Constitution of India, the detention order (Annexure : A) dated 6.6.1998 passed by the Commissioner of Police, Ahmedabad, is under challenge. The prayer is for quashing this impugned order through a writ of certiorari with further prayer to issue writ of habeas corpus directing immediate release of the petitioner from illegal detention.

2. Brief facts are that from two cases registered under various sections of the Indian Penal Code and Arms Act in the year 1997 and 1998 and further in view of statements of two confidential witnesses the detaining Authority was subjectively satisfied that the petitioner is a dangerous person and his activities are prejudicial for maintenance of public order. Accordingly the impugned order was passed.

3. This order has been challenged on two grounds. The first ground is that the representation dated 11.6.1998 sent by the Advocate of the detenu to the Chief Minister was not considered by the State Government rather it was returned with technical objection that it did not bear signature or thumb impression of the detenu and there was no authority from the detenu in favour of his advocate. Compliance of these defects was desired by the State Government. However, the representation was not sent back after making desired compliance. It has been argued that this technical objection has no substance in view of Apex Court's verdict in Balchand Chorasia v/s. Union of India, reported in A.I.R. 1978 SC 297. From Para : 3 of the Counter Affidavit of Shri J.R.Rajput, Under Secretary to the Government of Gujarat it is clear that the representation sent by the Advocate of the detenu on 11.6.1998 was addressed to the Chief Minister, which was received in his office on 12.6.1998. It is admitted in Para : 3 of the Counter Affidavit that the representation was returned for the aforesaid compliance. It is, therefore, clear that the representation sent by the petitioner through his Advocate has not been considered by the State Government till date and this is in violation in view of the Apex Court in Balchand Chorasia's case (supra). Consequently, this has render detention order illegal and invalid. Once the representation was sent by Advocate mentioning that it was sent under the authority and instruction of the detenu no further compliance was needed nor any Vakalatnama or authority letter was required from the detenu nor signature or thumb impression was required. Thus, this itself is a ground for quashing the order of detention.

4. The next argument has been that the activities of the petitioner cannot be said to be prejudicial for maintenance of public order. The petitioner was adjudged to be dangerous person in view of two cases registered against him in the year 1997 and 1998. The first offence is inter-alia under Section 302, 307, 324, 120-B of the Indian Penal Code and 25(1)(A) of the Arms Act. Other offence is under Section 363, 366, 120-B and 506, 114 of the Indian Penal Code. These are apparently offences punishable under Chapter XVI of the Indian Penal Code and Chapter V of the Arms Act. Repetition of activity and offences punishable under Chapter : XVI of the I.P.Code and Chapter : V of the Arms Act are therefore established. The petitioner was, therefore, rightly adjudged as dangerous person. It has been argued that the murder case was on account of private animosity between the complainant and the accused. It is not disclosed that murder was committed under such circumstances that public order in the locality was disturbed. Likewise the offence of kidnapping, etc. does not show that kidnapping was done under such circumstances that tension was created in the locality or situation prejudicial for maintenance of public order was created. As such these two registered offences cannot be said to have created situation prejudicial for maintenance of public order.

5. Regarding statements of two witnesses it can be said that the two witnesses were beaten by kicks and fists though the petitioner was having knife with him. No knife injury was caused. Usual recital has been made by them that because knife was shown to him as well as to members of public who collected at the spot atmosphere of fear was created in the area. This cannot be said to be situation or incident on account of which maintenance of public order was likely to be affected or was actually affected. Beating of witnesses and showing lethal weapon like revolver to the witnesses or to the members of public was not considered by the Apex Court to be the incidents disturbing the public order in M.J.Shaikh v/s. M.M.Mehta, reported in 1995 (2) G.L.R. 1268. Consequently, if in the instant case the petitioner on the point of knife chased the witness and the members of public it cannot be said that situation prejudicial for maintenance of public order was created. If this was so then the detention order cannot be sustained simply because the petitioner was adjudged as dangerous person.

6. For the two reasons stated above the impugned order cannot be sustained. The petition, therefore, succeeds and is hereby allowed. The impugned order dated 6.6.1998 (Annexure : A to the petition) is hereby

quashed. The petitioner shall be released from custody
forthwith unless wanted in some other case.

        sd/-
     (D.C.Srivastava, J.)
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